

# Freedom of Religion vs Islamophobia: Lombardy's "Anti-Mosque Law" is Unconstitutional

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While islamophobia is on the rise after the carnages of Paris and Bruxelles, recent developments in Italy may foster the confidence in the freedom of religion of European Muslims. In a ground-breaking decision, the Italian Constitutional Court has nullified a regional "anti-mosques law" enacted by the Lombardy Region one year ago, discriminating the Muslim community of this rich and populated area of Northern Italy.

## The anti-mosques' case and the following public debate

The Regional Law (n. 2/2015), adopted on January 27<sup>th</sup> 2015, established new principles for planning buildings and other structures for religious purposes. Its two articles contained a number of requisites to build places of worships and temples and referred only to religious denominations other than the Catholic Church. This regulation [made it extremely difficult](#) to erect religious buildings for all churches but the Catholic Church, particularly for Muslims. According to the Regional Government, this regulation was not discriminating, but originating directly from the Italian Constitution's principles in matters of freedom of religion.

It should be noted that, basically, the Italian Constitution recognizes a system in which all the religious denominations are "equally free" before the law (article 8). Moreover, the denominations may also sign a formal agreement of cooperation with the State, but unlike the Catholic Church which had signed its Concordat in 1929 (renewed in 1984), some other religions settled in Italy have no formal agreement ("Intesa"), particularly Islam. In fact, the Islamic community tried to conclude such a pact, but failed. The most relevant obstacle was the difficulty in determining a single organization that represents all the Muslim communities living in the country. As a result, lacking protection of the specific rule of the "Intesa", mosques were often considered "cultural associations" and not fully protected by the right to freedom of religion.

The "anti-mosques" law of Lombardy reinforced the blatant discrimination between the Catholic Church and other denominations, generating a wide public [debate](#) so that the Italian government decided to bring the case before the Italian Constitutional Court in order to have the law nullified. The Government claimed the apparent disparity between religious denominations, the discriminating effects of the norms, the competence of the State against the Region in matter of religious freedom and public security, the violation of European and International principles of freedom of religion and worship.

The Court faced the question and published its decision on [March 24<sup>th</sup> 2016](#). In sum, the Court has stated the following principles:

- the Italian legal system observes the idea of secularism (laicità). The principle means not indifference toward the religious experience, but represents the safeguard of religious freedom within a regime of religious and cultural pluralism. The State's task is to ensure the conditions that favor the expansion of the freedom of all and, as a consequence, the freedom of religion, which guarantees the human dignity.
- there must be no discriminations in matter of freedom of religion. This principle applies to both denominations that have an agreement with the State and denominations that have not. Given that opening places of worship is an expression of the religious freedom, such an activity cannot depend on any prior agreement.

Under this general umbrella, the court recognized only a couple of the claims asserted by the Italian Government, but this was sufficient to declare the core of the discriminating regulation invalid.

More in detail, the Court stated 1. the alleged discrimination between denominations in matter of freedom of worship; 2. the power of the State prevails over the Regional authority, when it occurs to balance the freedom of

## The Reasoning of the Court

1 The Regional power to legislate undoubtedly concerns the “territorial government”. In the Italian Constitution, this field is object of a shared competence between the Regions and the State (art. 117, third paragraph of the Constitution). Nevertheless, the division of powers between State and Regions requires taking into account not only the object, but also the *ratio* of norms as well as it is necessary to identify and protect the interests pursued by the norms. In doing so, the Region can never pursue objectives that go beyond its tasks: even if the Region regulates the matter of religious building for its urban planning, (i.e. to ensure balanced and harmonious development of cities and the realization of public services), it cannot hinder or undermine the freedom of religion, for example by providing differentiated conditions to build places of worship. Since the availability of temples and mosques is an essential condition for the effective exercise of religious freedom, a regulation imposing different requirements between denominations would exceed the regional power, interfering with the constitutional rights’ standards.

2 The Constitutional court is the judge that rules on matter of separation of powers. The object of conflict was the authority who decide to what extent the public security should be balanced with the freedom of religion. The contested norms prescribed a preliminary evaluation of public security and safety in the proceeding. More in detail, before to build the place of worship, a preliminary authorization of some public local authorities was required, as well as the installation of video surveillance systems with monitors on each entry, directly linked to the police station. On the point, the Court asserted that among the constitutional interests there are certainly those relating to security, public order and peaceful coexistence. However, they must be balanced with the protection of freedom of worship – in compliance with strict proportionality canons. The pursuit of those interests is entrusted by the Constitution exclusively to the State (art. 117, second paragraph, letter h), which decides by a law, while the Regions can cooperate to achieve tasks through specific measures. In account of this, being the norms of the Region, for their contents, instruments to reach public order and security they must be considered unconstitutional, since they exceed the limits of the powers attributed to the Region on the matter.

The “anti-mosques” law of Lombardy, adopted before the recent terrorist attacks, has a political background: It is part of the policy by the Lega Norte, the right-wing party that represents the majority in the regional Assembly of Lombardy, to cater to the strongly anti-migration and anti-Muslim sentiments of its political base. In this context, the decision of the Italian Constitutional Court is significant for many reasons. On the one hand, it helps sensitizing the Italian public towards discrimination and prejudice. On the other hand, it may foster the confidence of the Muslim minority in legality, fairness and justice, which is no easy task in these times.

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